

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES DALE MOSELEY,

Plaintiff,

v.

DSHS, et. al.,

Defendants.

CASE NO. C17-05427 BHS JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge. Dkt. 10. Having considered the R&R and the remaining record, and no objections having been filed, the court adopts the R&R with one clarification.

The R&R finds that plaintiff’s claims under 42 U.S.C. §1983 fail against defendants in their official capacities and against defendant DSHS and recommends dismissal without leave to amend. Dkt. 82 at 27. The Court agrees, but excepts from the dismissal with prejudice plaintiff’s claims under the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”); if properly alleged in an amended

1 complaint, such claims may be brought against DSHS and against defendants in their
2 official capacities.

3 Therefore, the Court does hereby find and order as follows:

4 (1) The R&R is **ADOPTED**;

5 (2) Defendants' motion for judgment on the pleadings is **DENIED** as to the
6 following: plaintiff's First Amendment retaliation claim against defendant
7 Smith; plaintiff's excessive force claim against defendant Smith;
8 defendants' assertion of qualified immunity; and

9 (3) Defendants' motion for judgment on the pleadings is **GRANTED**, but
10 plaintiff is allowed leave to amend his complaint as to the following claims:
11 use of force claim against defendants Grimm and Quintanella; retaliation
12 claim related to placement in segregation and denial of recreation time and
13 against defendants Grimm and Quintanella; decontamination claim against
14 defendants Grimm and Smith; inadequate mental health treatment claim
15 against defendants Harris, Coryell, and Rockwell; due process claim based
16 on placement in segregation; equal protection claim; unreasonable search
17 and deprivation of property claims; access to courts claim; claim(s) against
18 defendant Davos; and ADA and RA claims against DSHS and defendants
19 in their official capacities;

20 (4) Plaintiff's amended complaint is to be filed by June 15, 2020;

21 (5) Defendants' motion for judgment on the pleadings is **GRANTED** without
22 leave to amend as to the following claims: claims barred under the *Heck*

1 doctrine; Fifth Amendment takings claim; supervisory liability claims
2 against defendants Coryell, Harris, and Strong; official capacity claims
3 against all individual defendants and DSHS except for ADA and RA
4 claims; claims for injunctive relief; and

5 (6) This matter is re-referred to Magistrate Judge Creatura for further
6 proceedings.

7 Dated this 14th day of May, 2020.

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10 BENJAMIN H. SETTLE
11 United States District Judge
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